



Appeal Decision

Site visit made on 25 August 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal Ref: APP/B0230/W/20/3248530

Land rear of 135 New Bedford Road, Luton, Bedfordshire LU3 1LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr N Raza of RPSB Limited against the decision of Luton Council.
 - The application Ref 19/00703/FUL, dated 24 April 2019, was refused by notice dated 9 December 2019.
 - The development proposed is the erection of one building comprising 18 flats, parking and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:-
 - (i) the effect of the development on the character and appearance of the area;
 - (ii) the effect of the development on the living conditions of the occupiers of the adjoining residential properties with particular regard to privacy and outlook;
 - (iii) whether the development would provide suitable living conditions for its future occupiers with particular regard to outlook, amenity space provision and the size of the flats; and
 - (iv) the provision of infrastructure.

Reasons

Character and appearance

3. The appeal site is located on the west side of New Bedford Road. The area has a mixture of traditional housing, flat blocks and commercial premises all within the immediate vicinity of the site. Additionally, Wardown Park is located on the opposite side of New Bedford Road.
4. As I have noted from the appeal submission and my site visit, there is a degree of tandem development in the area, including the adjacent site, Nickmar Court. To that end, I consider that a building sited behind the existing building is not unacceptable in principle.

5. However, the appeal development would result in a substantial four-storey flat roof building to the rear of the existing property. It would also be constructed close to each side boundary. Given the space around the existing building, and that on other developments in the vicinity of the site, the appeal proposal would appear as if it was squeezed into the available space which would be in contrast to other flat developments I observed in the area. In my opinion, this cramped appearance would result in harm to the character and appearance of the area.
6. This harm is also exacerbated by the overall height of the development which would be higher than the tandem development at Nickmar Court. In my opinion, this demonstrates that the amount of development proposed is in excess of what the site can reasonably accommodate without giving rise to harm to the area as a whole. Furthermore, the amount of development proposed on the site, together with its necessary parking provision, would result in very little landscaping on the site. This also highlights the over-developed nature of the proposal.
7. In coming to the above view I acknowledge the need for new housing, and that under-utilised sites can provide much needed land for such developments. However, this should not be to the detriment of the character and appearance of the area.
8. Turning to the design of the proposed building, it would include a mixture of brickwork, render and metal cladding which is consistent with the palette of building materials in the vicinity of the site. Furthermore, given the existing flat blocks in the area I consider that the overall design concept is not objectionable. That said, this positive design does not overcome the fact that the building would be overly large relative to the site and its surroundings and would appear as an incongruous addition.
9. For the above reasons the proposal would harm the character and appearance of the area and would be contrary to Policies LLP1, LLP15 and LLP25 of the of the Luton Local Plan 2011-2031 (2017) (LLP) which amongst other matters seek to permit sustainable development and to ensure that proposals are of a high quality design which do not result in the over-intensification of the site and that quality places are created. It would also be at odds with the overarching design aims of the National Planning Policy Framework (the Framework).

Living conditions – existing occupiers

10. The appeal development includes habitable room windows on all elevations of the building at all levels. Significantly, there are windows which face toward Nos. 16-19 Nickmar Court which is a residential block to the north of the appeal site.
11. As I understand it, there would be a distance of around 15 metres between the habitable room windows in the development and those of the rear elevation of Nos 16-19. Whilst the Council do not have any set distances between habitable room windows, I consider that a distance of around 15 metres between facing windows is such that it would result in a significant loss of privacy to the occupiers of the Nickmar Court properties. This is particularly the case as the windows directly face one another and there is little prospect of any screening to prevent such overlooking.

12. I have also had regard to the effect of the development on outlook from these properties given the scale of the proposal. However, whilst the development would inevitably change the outlook, to my mind, it would not result in an oppressive environment given the distance between the respective buildings. However, that does not outweigh the harm I have found in respect of privacy.
13. Turning to the effect of the development on the other surrounding properties, including Lake View and those on Alexandra Avenue, I acknowledge that the development would have windows and balconies which face these properties and their curtilages. That said, the area to the rear of Lakeview is largely a car park and the distance to the Alexandra Avenue properties is such that it is unlikely that there would be any significant overlooking potential despite the land level differences and the height of the appeal proposal.
14. Finally, whilst the development would undoubtedly result in a large building on the appeal site, to my mind, it would not result in an overly prominent structure from the habitable room windows of the flats in Lake View given the juxtaposition between the buildings. Similarly, I consider that the land level differences and the intervening buildings would ensure that it would not result in an unacceptable outlook from the rear of the Alexandra Avenue properties either.
15. For the above reasons, the development would harm the living conditions of the occupiers of 16-19 Nickmar Court as a result of the loss of privacy contrary to Policies LLP1 and LLP25 of the LLP which amongst other matters seek to permit sustainable development and to ensure that proposals are of a high quality design, including adherence to the best practice principles of urban design to help create quality places. It would also be at odds with the overarching design aims of the Framework.

Living conditions – future occupiers

16. In terms of outlook from the proposed flats, I note that the land levels at the site show that the finished floor level would be set at a much lower level than the amenity space to the rear of the site. Furthermore, the elevated garages to the Alexandra Avenue properties immediately to the rear of the site would be a significant feature when looking from the rear facing habitable room windows of flats 5 and 6 in particular. Given the respective land levels the outlook from these windows would be of a tall brick wall at a distance of around 4 metres. To my mind, this would not result in an acceptable outlook for the future occupiers of these flats as it would be dominated by the tall wall of the garages. Whilst there may be some opportunity for landscaping to soften the impact, there is little room to do so without further harming the outlook from these rear facing windows.
17. In addition to the above, the first-floor rear facing flats would have a similar outlook, albeit that the relative height of the wall of the garage block would not be as high as from the ground floor flats. Nevertheless, I consider that there would still be some harm in this respect.
18. Turning to the amount of amenity space provision, appendix 6 to Policy LLP25 of the LLP sets out that for flatted development there should be a minimum of 5 square metres of private outdoor space per flat. However, where this is not achievable, amenity space could be provided as a communal space.

19. Whilst I agree that the flats which have balconies would be provided with suitable amenity space provision, I am conscious that the spaces to each side of the building are of limited value owing to the small distance between the proposed building and the side boundaries. I am also conscious that the spaces directly outside flats 3 to 6 inclusive could not be utilised as communal space without seriously affecting the privacy of the occupiers of the respective flats.
20. With that in mind, I find that the proposal would not provide a suitable quality of private or communal amenity space for the future occupiers of the development. In coming to that view, I acknowledge the sites proximity to Wardown Park which is an attractive area of public open space. Whilst this space would provide some opportunity for the developments future occupiers to relax, this is not a substitute for private amenity space provision.
21. The Council have also set out that the one-bedroom flats are between 36 and 40 square metres in floorspace, whilst the two-bedroom flats are between 59 and 63 square metres. From the submitted drawings, there are 3No. one-bedroom flats¹ and 2No. two-bedroom flats² which fall short of the minimum gross internal floor areas from the Technical Housing Standards – nationally described space standard (THS). The THS sets out that for a one-bedroom/one-person property there should be a minimum of 39 square metres (reduced to 37 square metres where it has a shower room as opposed to a bathroom), whilst for a two-bedroom/three-person flat there should be a minimum of 61 square metres.
22. In addition to the above the Council have also set out that the ground floor one-bedroom units (flats 3-6 inclusive) have a width of bedroom which could accommodate a double bed and these units should be classed as a one-bedroom/two-person property which would require a minimum floor area of 50 square metres. Whilst the plans indicate that these bedrooms would only accommodate a single bed, the size of the bedrooms themselves are big enough to be classified as a double bedroom using the size standard in the THS. To that end, these bedrooms must be considered to be double bedrooms and therefore these flats should be assessed on the basis that they are one-bedroom/two-person accommodation. With that in mind, the flat sizes are significantly smaller than the THS standard.
23. That said, I am also conscious that the THS can only be applied if there is a relevant Development Plan policy seeking these space standard requirements. In the absence of such a policy being provided to me, I can only give this very limited weight. As such, this is not a determinative factor in this case. However, it does add some weight to the harm I have found above especially given the lack of suitable amenity space.
24. For the above reasons the proposal would not provide suitable living conditions for the occupiers of all of the flats as a result of poor outlook and lack of suitable outdoor amenity space and would therefore conflict with Policies LLP1 and LLP25 of the LLP which amongst other matters seek to promote sustainable development and deliver new housing which has suitable external amenity space and does not suffer from poor outlook. It would also be at odds with the overarching design aims of the Framework.

¹ flat 3 at 38.929 square metres, flat 18 at 38.21 square metres and shower room flat 6 at 36.633 square metres

² flat 1 at 59.152 square metres and flat 11 at 60.956 square metres

Infrastructure

25. The Council have indicated that had they have been minded to grant planning permission for the development there would have been a requirement for various infrastructure matters to be addressed. This includes the provision of affordable housing and financial contributions towards Education (Primary - £34,624 and SEN - £17,390), Museums (£1,219), Libraries (£1,511), Waste Management (£661.33) , Public Open Space (£40,000) and a Car Club contribution (£9,500).
26. The Appellant has provided a copy of a unilateral undertaking which seeks to deliver financial contributions, although the figures included in this document do not correspond with the figures requested by the Council. Furthermore, the undertaking is not a signed copy and I am unclear whether this is a completed document. Even if this was not the case, it is significant that in the definitions section it refers to the 'planning permission' as being granted by the Council. Even if I were minded to allow the appeal, this would not be the case and as such none of the financial payments in the document would be required to be paid. I therefore give this undertaking very little weight in my decision.
27. Notwithstanding that, on the basis of the evidence before me, it is unclear how any of the Councils contributions requested have been calculated to the extent that I am unable to confirm whether these would accord with the CIL regulations. Therefore, in this respect the lack of a suitable legal agreement for such financial payments is not fatal to the proposal.
28. Finally, as I understand it, the development should provide at least 20% affordable housing. Given that the undertaking does not provide such a provision, and no other mechanism to provide such affordable housing has been presented to me, I find that the lack of affordable housing provision weighs heavily against the development.
29. Therefore, in the absence of a mechanism to deliver much needed affordable housing the proposal would be in conflict with Policies LLP1, LLP16 and LLP39 of the LLP which amongst other matters seek to promote sustainable development and to deliver new affordable housing. It would also be at odds with the housing aims of the Framework in this respect.

Other matters

30. The Appellant has set out potential economic benefits which the scheme would provide including temporary employment from the construction process and an uplift in the local economy through an increase in local spending and the local labour market. Whilst I consider that these are benefits of the development, they do not outweigh the harm I have found.

Conclusion

31. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR